



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2011

Ms. Denise Y. McLean
Director of Communications
La Marque Independent School District
P.O. Box 7
La Marque, Texas 77568

OR2011-04060

Dear Ms. McLean:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412469.

The La Marque Independent School District (the "district") received a request for personnel records relating to seven named individuals, including certifications, employment applications, and records of complaints, disciplinary matters, evaluations, and appraisals. You indicate the district has no responsive information relating to three of the named individuals.¹ You claim the submitted information relating to two of the individuals is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.² We

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note the district received the instant request for information on December 20, 2010, but did not request this decision or submit the information at issue until January 18, 2011. In this instance, however, we need not determine whether the district complied with its deadlines under section 552.301 of the Government Code in requesting this decision, because the district's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure sufficient to overcome the statutory presumption arising from a violation of section 552.301 that information is public and must be released. *See Gov't Code* §§ 552.301(a)-(b), (e), .302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

assume the district has released any other information that is responsive to this request, to the extent such information existed when the district received the request. If not, then the district must release any such information immediately.³ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. See Open Records Decision No. 643 (1996). We have determined that for the purposes of section 21.355, the word "administrator" in section 21.355 means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. See ORD 643 at 4. Additionally, a court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." See *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

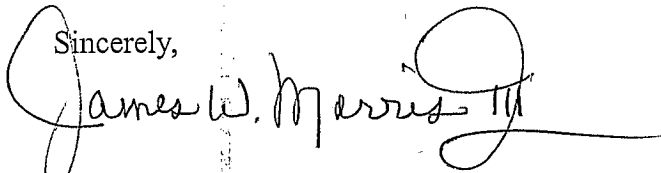
You contend all the submitted documents are evaluations made confidential by section 21.355. We note these documents pertain to employees of the district who were serving as a school principal or assistant principal when the documents were created. You do not inform us, however, whether or to what extent these employees held administrators' certificates under subchapter B of chapter 21 of the Education Code when the documents were created. Therefore, we must rule conditionally. Thus, we conclude the district must withhold the documents we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the employees to whom the marked documents pertain held an administrator's certificate under chapter 21 of the Education Code when the documents were created. But to the extent the employees concerned did not hold an administrator's certificate under chapter 21 of the Education Code when the marked documents were created, those documents may not be withheld under section 552.101 in conjunction with section 21.355 and must be released. We conclude you have not demonstrated the remaining documents at issue evaluate the performance of an administrator or a teacher for purposes of section 21.355 of the Education Code. Therefore, the remaining documents may not be withheld under section 552.101 of the Government Code on the basis of section 21.355 and must be released.

³We note the requestor does not seek access to personal information, including home addresses and telephone numbers, e-mail addresses, and social security numbers. Thus, those types of information are not responsive to this request and need not be released in response to the request.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, reading "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 412469

Enc: Submitted documents

c: Requestor
(w/o enclosures)